

LEGAL AID SOCIETY OF MID-NEW YORK, INC.

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Funded in part by the Legal Services Corporation

Robert B. Salzman, Esq.
Executive DirectorReply to:
Utica Office

February 28, 2003

Mattie C. Condray, Senior Assistant
General Counsel, Office of Legal Affairs
Legal Services Corporation
750 First Street Northeast
Washington, D.C. 20002-4250

Re: comments regarding Limited English Proficiency guidance

Dear Ms. Condray:

The Legal Aid Society of Mid-New York, Inc., which serves a nine-county area in upstate New York consisting of Oneida, Herkimer, Madison, Lewis, Fulton, Montgomery, Otsego, Delaware and Schoharie counties, and operates a migrant farmworker program, welcomes the opportunity to respond to the Legal Services Corporation's recent request for comments regarding Limited English Proficiency (LEP) guidance. As the staff attorney who drafted our program's language access policy, I have been requested to offer the following comments.

Language access for our client base has been an increasingly critical issue, due to a rise in the percentage of Spanish-speakers in our service area, as well as the presence of a refugee center in our community actively engaged in refugee resettlement. Our service area includes significant numbers of LEP individuals, many of whom are refugees from Bosnia, the former Soviet Union, Vietnam, and various other countries. To meet the challenge of providing adequate language access for our clients, and in compliance with agreements with the Department of Justice (DOJ) and the State of New York to provide legal services to victims of domestic violence and households with members applying for disability benefits, our program has already formulated and implemented a language access policy modeled after the current guidance issued by DOJ and the Department of Health and Human Services (HHS). Accordingly, our program has concrete experience in dealing with the problems of language access within a highly diverse client community.

Based on our experience, it is our recommendation that rather than issue regulations or guidance regarding LEP access, LSC would best assist programs like ours by providing information-sharing with respect to best practices and by facilitating statewide planning around the practical problems of implementing LEP policies. In particular, statewide cost-sharing in creating multilingual outreach materials and obtaining discounted rates for telephonic interpreting services is desperately needed in order to offer a cost-effective solution to language access issues to grantees.

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1. Regulatory vs. Non-Regulatory Involvement

Within the context of its request for comments regarding LEP access, LSC has considered the option of issuing its own regulations, which presumably would set standards for compliance with grantees' contractual obligation to refrain from national origin discrimination as it relates to LEP clients. Our program is of the opinion that such an approach would be inadvisable, given the difficulties that would be involved in formulating and enforcing such standards, as well as the diversion of much-needed resources better used in actually increasing the ability of legal services programs to provide meaningful language access.

Unlike LSC's regulations regarding Section 504 compliance, regulations addressing the obligations of legal services programs to provide LEP access would be extremely difficult to develop due to differences in size, location, priorities, and the various client communities served. The DOJ guidance itself recognizes that compliance with the national origin discrimination prohibition of Title VI of the Civil Rights Act of 1964 requires "an individualized assessment that balances the following four factors: 1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; 2) the frequency with which LEP individuals come in contact with the program; 3) the nature and importance of the program, activity, or service provided by the program to people's lives; and 4) the resources available to the grantee/recipient and costs." Obviously, larger programs may have more resources, and thus a greater obligation, than smaller ones; urban programs may have greater access to contract interpreters and community volunteers, whereas rural programs might be forced to rely more heavily on telephonic interpreting services; and programs with larger percentages of LEP clients and/or greater language diversity may face greater challenges than those with lesser percentages and/or less diversity.

Because compliance with the obligation to provide language access is measured on a case-by-case basis, it would also be very difficult to enforce. Enforcement would be further complicated by LSC's admittedly limited resources and expertise in such matters. As discussed in its request for comments, LSC has also pointed out that its authority to resolve complaints by LEP persons would be limited to informal mediation and/or suspension or termination of grant awards, rather than providing any meaningful relief to the complainant.

Perhaps the most compelling argument for refraining from issuing regulations regarding LEP access, however, lies in the need to apply scarce resources to practical applications of providing LEP access as opposed to investigation and enforcement. An added regulatory burden at this time would only serve to divert grantees' time and resources from recruitment of bilingual staff/contract interpreters/community volunteers, development of multilingual outreach materials, and other steps needed to ensure compliance. Rather than exhaust the limited resources of Compliance and Enforcement staff in monitoring efforts, which would be difficult at best, LSC could have a measurable impact on grantees' ability to provide language access through technical assistance.

2. Issuing Non-Regulatory Guidance

Issuing non-regulatory guidance, too, would be problematic. Our program, like many other legal services programs, receives funding from various non-LSC sources that are subject to the

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mandates of Title VI. For example, our program currently receives Violence Against Women Act (VAWA) funds from the DOJ to assist victims of domestic violence in our service area. In addition, we recently began receiving TANF funds from the State of New York to assist families with minor children who may have a household member applying for disability benefits. As such, we are currently already subject to both the DOJ guidance and the HHS guidance regarding language access for LEP persons.

Guidance already provided by DOJ and HHS has been invaluable in assisting our program to create its own language access policy. Further guidance by LSC could only serve to duplicate, or worse even conflict with, the other mandates to which our program is subject. In addition, since both the DOJ and the HHS Office of Civil Rights already have procedures in place for handling complaints with respect to language access, additional guidance by LSC is unnecessary and would perhaps subject grantees to multiple and duplicative investigations for the same language access problems. We would therefore suggest that, rather than creating its own guidance, LSC recommend the existing DOJ guidance to its grantees.

3. Best Practices And Statewide Planning

As discussed above, LSC could best utilize its resources in providing technical assistance to grantees in developing meaningful language access programs. From experience, our program anticipates that an effort by LSC to compile information on best practices, as well as to facilitate statewide planning to reduce costs, would be extremely valuable to grantees.

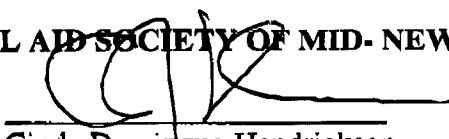
In the course of implementing our language access policy, the greatest challenges have been the availability of qualified interpreters, as well as the cost of both oral and written translation services. A statewide "interpreter bank," compiling lists of qualified interpreters who would be available to programs by telephone or in-person contact, would help to solve the problem of locating interpreters for less-frequently encountered languages. Also, many telephonic interpreting services offer discounts based on volume; therefore, a statewide contact with a single interpreting service could substantially reduce the cost of the service and make it more accessible to smaller programs. Finally, translation of outreach materials into various languages on a statewide level would not only spread the high cost of development of the materials among many programs, but also better ensure the quality of the materials and avoid duplication of efforts. We strongly urge LSC to consider requiring state planning bodies addressing reconfiguration issues to assess the LEP access needs of affected programs, and facilitate statewide efforts to enhance the ability of programs to provide meaningful language access.

We thank you for the opportunity to comment on this matter, and look forward to any future assistance that LSC may provide.

Very truly yours,

LEGAL AID SOCIETY OF MID- NEW YORK, INC.

By:


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